IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.454 OF 2004
AND
WRIT PETITION NO.455 OF 2004

W.P.NO.454 OF 2004

1. Collector of Goa,
North Goa District,
having his office at Collectorate,
Panaji, Goa.

2. Sub-Registrar, Bicholim Taluka,
having his office at Bicholim,
Goa. .. Petitioners.

Vs.

1. Smt. Vinodini Vinayak Joshi,

2. Shri Vinayak Trivikram Joshi,
both residents of Post Batim,
near Maina Math, Bardez, Goa. .. Respondents

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Ms L. Dharwadkar, Additional Government Advocate for the petitioners.

Shri A.J.Kenkre, Advocate for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 2ND FEBRUARY, 2006.

ORAL JUDGMENT :

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. Since the common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

3. In both these petitions, the respondents had submitted the sale deeds for registration before the Sub-Registrar of Bicholim in respect of the plots purchased by them. The value of the plots purchased by them had been shown as Rs.9/- p.s.m. The Sub-Registrar of Bicholim having found the valuation of the property to have been done much below the market value of the property, referred the matter under Section 47(1)(A) of the Indian Stamp Act to the revenue authorities for necessary action. Pursuant to the said reference, the Collector issued the show cause notices to the concerned parties on 12th November, 1997, and after hearing the parties, passed an order dated 8th January, 1999 holding that the market price of the plot was undervalued by Rs.91/- p.s.m. as the market value of the plot was Rs.100/- p.s.m. Being aggrieved by the said order, the respondents filed the appeals being Appeal No.3/2001/A and 2/2001/A, respectively, before the learned Civil Judge, Senior Division, Bicholim. After conducting necessary inquiry, the learned Civil Judge by his order dated 4th December, 2003 held that the market price of the respective plots was at Rs.20/- p.s.m., and therefore, the parties would be liable to pay additional stamp duty of Rs.11/- p.s.m. Being aggrieved by the said order, the petitioners have filed the present petitions. It is also to be noted that prior to the

present petitions, the respondents had filed the Second Appeals. However, having realized that the same were not maintainable, those appeals were withdrawn and thereafter, the present petitions were filed.

4. While assailing the impugned orders, the learned advocate appearing for the petitioners submitted that the learned Civil Judge committed material irregularities by substituting his findings to the Collector's findings regarding valuation of the property totally ignoring the relevant materials on record including the statistical evidence, and the impugned orders ex facie disclose that the findings regarding valuation of the property to be contrary to the materials on record and ex facie perverse. On the other hand, the learned advocate appearing for the respondents submitted that the court below, after taking into consideration the entire materials on record, has correctly arrived at the finding regarding valuation of the property, and therefore, the impugned orders do not warrant any interference in writ jurisdiction.

5. On perusal of the impugned orders passed by the learned Civil Judge, it apparently discloses that the witnesses are stated to have categorically deposed about the nature of the plots as also its

location vis-a-vis national highway and other amenities. The findings also disclose that the plot of the brother of the respondent No.1 who had sold the property at the rate of Rs.9/- p.s.m. was different in nature. Apart from that, it was not a developed plot besides being away from the national highway. Having observed so, the learned Civil Judge has proceeded to hold that the same yardstick which was applied to the brother of the respondent No.1 cannot be applied to the plots of the respondents as the plots of the respondents are developed plots. Yet the learned Civil Judge has further proceeded to hold that the valuation of the property at the rate of Rs.100/- p.s.m. is without proper justification and the rate of Rs.20/- p.s.m. would be just and proper in the facts and circumstances of the case on record. As already observed above, the facts and circumstances on record which are narrated in the order of the learned Civil Judge refer to a testimony of the party which revealed the plots in question to be developed plots in comparison of the plot of the brother of the respondent No.1 which was sold at the rate of Rs.9/- p.s.m. Being so, the finding of the court below regarding the rate of Rs.20/- p.s.m. is apparently a guess work without any basis, besides being contrary to the materials on record and without any application of mind. There is no assessment of the evidence on record by the Court below to arrive at the figure of Rs.20/- p.s.m.. At the same time, the evidence

on record speaks of the plots in question being developed plots in comparison of the plot of the brother of the respondent No.1 which was transacted at Rs.9/- p.s.m. In the circumstances, therefore, it is not understood as to on what basis the figure of Rs.20/- has been arrived at.

6. Once the Collector had arrived at the rate of Rs.100/- p.s.m. being the market value of the plot on the basis of certain materials, it was necessary for the lower appellate court to analyse the materials in that regard in order to ascertain whether the findings arrived at by the Collector can be said to be not borne out from the record and if so, to what extent. Merely because the lower appellate Court on guess work considered the just and proper market price of the property at the rate of Rs.20/- p.s.m., that cannot be a justification for interference in the impugned orders of the authority of the original jurisdiction which have been passed based on certain materials before such authority. Before arriving at the finding to the contrary, it was necessary for the lower appellate Court to ascertain the incorrectness or impropriety of such findings by the lower authority, and thereafter to consider whether it is necessary for the lower appellate court to re-assess the evidence on record, and even in case of additional evidence taken by the lower appellate authority to

assess such evidence, before arriving at any finding as regards the valuation of the property.

7. It is also to be borne in mind by the lower appellate court that it deals with the matter of revenue to the government. Such matters cannot be dealt with in a casual manner in which the lower appellate court has dealt with. The valuation of the property in such cases cannot be solely on the basis of guess work but it should be on proper assessment of materials on record and the figure to be arrived at should be a just valuation of the property. Once the lower authority based on the statistical evidence as well as the evidence in the form of sale deed had arrived at a particular figure as being the market value of the property, it was necessary for the lower appellate Court to ascertain the incorrectness or impropriety of such findings of the lower authority in calculating the market value of the property. This does not mean to say that in case the Collector had not conducted the inquiry or that the findings arrived at by the lower appellate court can be based solely on the guess work, certainly the parties can be allowed to lead evidence at the appellate stage and the lower appellate court based on the entire evidence placed before it shall decide the matters in accordance with the provisions of law.

8. For the reasons stated above, the impugned orders cannot be sustained and are liable to be quashed and set aside and the matters are required to be remanded to the lower appellate court to re-consider the appeals in accordance with the provisions of law and bearing in mind the observations made hereinabove and to pass appropriate order. The petitions accordingly are allowed. The impugned orders are hereby quashed and set aside and the matters are remanded to the lower appellate court to re-consider the appeals in accordance with the provisions of law and bearing in mind the observations made hereinabove and to pass appropriate order. The lower appellate court to take up the matters and decide the same as expeditiously as possible and in any case within a period of six months from the date of receipt of writ from this Court.

9. The rule in both the petitions is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)